IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1434 OF 2006

M/s New Hind Agency ..Applicant
V/s
Mr. Sushil Bhausaheb Bhase & Anr. ..Respondent.

Mr.V.A. Shastri, Advocate for the applicant.
None for respodnent No.1.
Mrs. M.H. Mhatre, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 13TH APRIL, 2007.

P.C.

. Heard Mr. Shastry , learned Counsel for the applicant. He has taken me through the impugned Judgment and the evidence led by Mohan Kushiram Nawani.

2. According to the complainant, which is proprietorship concern of Mohan Kushiram Nawani, on 12/2/2004 the respondent No.1, who is original accused, had purchased certain goods for amount of Rs.4,60,000.- from him on credit and towards the payment of price, the accused had issued one cheque of amount of Rs 4,50,000/-.The cheque was presented for encashment but it was dishonoured. Thereafter the statutory notice was issued to the accused on 10/3/2004. As he has failed to

make any payment during the stipulated period, the complaint was filed. The complainant examined himself and filed his affidavit. He was cross-examined at length on behalf of the accused. From the cross-examination of the complainant it was revealed that the accused was working as Accountant in another firm in which the complainant was the partner. The complainant had removed him from service on 26/1/2004 on the ground that he had committed fraud and misappropriated Rs. 26 lakhs of that firm. According the accused, at that time he was pressurised and forced to put signatures on the blank cheques and on the basis of those blank cheques he filed this false case. After taking into consideration the circumstances of the case, the learned Magistrate accepted the contention of the accused that he had signed the blank cheques under pressure when he was being dismissed from service on the ground that he had played fraud and misappropriated the huge amount. Therefore, the Magistrate found that the complainant had failed to prove that he had sold the goods and cheque was issued in discharge of the liability towards the payment of price of the goods. With these findings the accused came to be acquitted. The present application is filed seeking leave to file

appeal against the order of acquittal.

3. After hearing Mr. Shashtry at length and after perusal of the impugned judgment, I find that it was against the normal human conduct to sell the goods worth Rs. 4,50,000/- on credit to a person, who was removed from service only a few days before this transaction on ground that he had committed fraud and misappropriated to the tune of Rs. 26 lakhs. In view of the circumstances, the possibility of that some blank cheques were taken from him cannot be ruled out. The learned Counsel placed reliance on paragraphs 21,22 and 23 of the judgment in **Hiten Dalal V. Bratindranath Banerjee 2001 (5), Bombay C.R. 820**, in support of his contention that there is a presumption of consideration for a cheque and that heavy burden lies on the accused to rebut that presumption. After going through the said authority, I find that in view of the circumstances of the present case the accused has successfully rebutted the presumption and it is impossible to believe that the complainant could sell goods worth Rs. 4,50,000/- to the accused on credit within a few days after having removed him from the service on the ground of fraud and misappropriation of such a huge amount. Learned Counsel

contends that a bill was also prepared about the sale of goods but he admitted that the signature of the accused was not taken because it was generated by computer. It was very easy to prepare such a bill. Taking into consideration all the circumstances of the case, the learned Magistrate has passed the order of acquitted. In my opinion, it is not a fit case, where the leave to prefer the appeal can be granted.

4. The application stands rejected. Leave refused

(J.H. BHATIA, J.)